

BENJAMIN H. SPRINGER.

FEBRUARY 1, 1858.—Committed to a Committee of the whole House and ordered to be printed

The COURT OF CLAIMS submitted the following

REPORT.

*To the honorable the Senate and House of Representatives of the United States in Congress assembled :*

The Court of Claims respectfully presents the following documents as the report in the case of

BENJAMIN H. SPRINGER *vs.* THE UNITED STATES.

1. The petition of the claimant and amendment on which testimony was ordered November 29, 1856.
2. Claimant's brief on petition.
3. Depositions of Joseph Smith, Philip C. Johnson, John G. Rep-  
lier, and John W. Bronaugh.
4. Letters and statement from the Navy Department in answer to  
an order from the Court of Claims transmitted to the House of Rep-  
resentatives.
5. Claimant's brief on the facts.
6. Solicitor's brief.
7. Opinion of the Court adverse to the claim.

By order of the Court of Claims.

In testimony whereof, I have hereunto set my hand and affixed the  
[L. S.] seal of said court at Washington, this 1st day of February,  
A. D. 1858.

SAM'L H. HUNTINGTON,  
*Chief Clerk Court of Claims*

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PETITION.

*To the Honorable Court of Claims of the United States, sitting in  
Washington, D. C. :*

Your petitioner, Benjamin H. Springer, of the city of Philadel-  
phia, Pennsylvania, respectfully represents : That on the 15th day of

January, 1851, he was appointed "agent of the Navy Department, for the purchase of anthracite coal for the use of the navy," as will appear by the Secretary's letter of that date, of which a copy is appended. In pursuance of the terms of that letter, the petitioner was always allowed and paid the stipulated commission of five per centum upon the gross cost of the coal, including all expenses, whether the same was sent to any part of the United States or shipped to any foreign port. Your petitioner avers that this was the settled construction of his contract with the department, never disputed until the occasion which will now be stated.

By letter of the 3d April, 1852, of which a copy is appended, the Secretary of the Navy appointed Messrs. Howland and Aspinwall, of New York, agents for furnishing coal to the squadron of the United States in the East Indies, the China seas and the Pacific ocean, stipulating to pay them ten per centum upon the gross amount of supplies, including all charges, but expressly providing, "that for all American coal shipped from the United States there shall be deducted from the above commission of ten per centum the commission allowed the agents of the department for supplying coal within the United States."

As your petitioner had been appointed to his agency on account of his experience and his knowledge of the different qualities of coal, the Bureau of Equipment, Construction and Repairs, by letter of June 30, 1852, of which a copy is appended, required him to inspect the various cargoes purchased and shipped by Messrs. Howland and Aspinwall; and (as he learned afterwards,) upon his certificate, before the delivery of the coal in the Pacific, the purchase money for the same was advanced to them by the department. This petitioner faithfully performed the duty assigned him, inspecting the coal shipped, sometimes approving and receiving it, and sometimes advising Messrs. Howland and Aspinwall that certain coals proposed to be shipped by them were unsuited to the purpose, and would not be received. Petitioner has reason to believe that the faithfulness of his inspection was distasteful to Howland and Aspinwall, and through their great influence finally led to his dismissal from his agency, as stated hereafter.

On the 1st of July, 1853, the petitioner rendered his quarterly account, which was made out by one of the clerks of the Bureau of Construction, Equipment and Repairs, by direction of the chief thereof, and included commissions upon the gross charges to the port of destination, as now and always heretofore claimed under his original contract. Up to this time the claim was undisputed and fully recognized by the department, and this petitioner was permitted freely to examine the accounts of Howland and Aspinwall, for the purpose of rendering his own.

On the 29th of August, 1853, to his great surprise, your petitioner was informed by the Bureau of Construction, Equipment and Repairs, that his commission of five per centum would be allowed only upon the cost of the coal at the port of shipment; and upon this basis his accounts have been made out by the bureau and paid; always, how-

ever, with a protest on his part and a demand of payment according to his understanding of the agreement, and the former usages of the department. Your petitioner has applied for permission to examine the accounts returned by Howland and Aspinwall, so that he might render his own account according to his understanding of his rights, but this privilege has been denied him, and he now has no remedy except through the interposition of this honorable Court.

On the 29th July, 1853, the Secretary advised the petitioner that his agency was abolished; and the Secretary added, "you will be pleased to complete the orders now on hand, and render your account to the proper bureau for final settlement." The correspondence with the department and with Messrs. Howland and Aspinwall will show what orders were then on hand, and also that your petitioner faithfully performed his duty, as far as he was permitted to do so, though Howland and Aspinwall refused to allow him to inspect certain coals ordered by the bureau to be inspected. The correspondence on this subject will be exhibited when the Court may require it.

Your petitioner insists that he is entitled to his full commissions upon all the coals which he was ordered to inspect during his agency, and which he was ready and willing to inspect, and that such commissions are to be estimated upon the gross amount of charges of all kinds at the port of destination, according to the understanding and usage of the department prior to the transactions herein stated. Upon any other construction of the agreement the allowance to Howland and Aspinwall was improvident and excessive, and grossly unjust to this petitioner. The large commission of ten per centum was doubtless allowed because one-half of that amount was intended to be reserved to the home agents, upon all American coals; and because it was known (as afterwards proved to be the case) that much the larger part of the shipments would be of English coal, upon which the whole commission would be due to Howland and Aspinwall.

Your petitioner has been informed that the claim of John Jamison, late bituminous coal agent, who occupied a similar relation to Howland and Aspinwall in this matter, has been allowed and paid to the full extent of the present demand. It is believed that the correspondence on file in the Navy Department will establish this fact; the petitioner also believes that the correspondence of the department with Howland and Aspinwall will show that both parties at one time understood your petitioner's claim to be of right and as he now states it. But as your petitioner has not been allowed to see that correspondence, he asserts only his belief, and not his knowledge.

The petitioner cannot state his account accurately, for want of information which the Navy Department refuses to give him. To the best of his judgment and belief, the commissions due him by the Navy Department upon the principles herein stated, will amount to a sum between ten thousand and fifteen thousand dollars. He prays this honorable Court to exert its lawful authority to enable him to ascertain all the items of his account; and, believing his demand to be just, according to the legal intent of his agreement with the government, he prays that it may be allowed and reported to Congress for

payment. The petitioner is the sole owner of the claim, not having sold or assigned any part of it to any other person.

B. H. SPRINGER.  
BROWN, STANTON & WALKER,  
*Attorneys for the Petitioner.*

UNITED STATES,  
*Eastern District of Pennsylvania,* } *scd.*

On this third day of July, 1855, before me, Charles F. Heazlitt, a commissioner appointed by the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, under the laws of the United States, to take affidavits and acknowledgments of bail, &c., personally appeared Benjamin H. Springer, who being duly sworn, did depose and say, that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on his information and belief, and as to those matters, he believes it to be true.

B. H. SPRINGER.

CHAS. F. HEAZLITT,  
*United States Commissioner.*

NAVY DEPARTMENT,  
*January 15, 1851.*

SIR: You are hereby appointed the agent of the Navy Department for the purchase of anthracite coal for the use of the navy.

You will receive a commission of five per cent. on the amount of all purchases made by you in this capacity, which commission is to cover all expenses of selecting, purchasing and shipping the coal.

Your duty will be to select anthracite coal under the directions of the department and its bureaus, of the best quality adapted to the purpose for which it is to be used, and to ship it to such ports as may be indicated.

I am, respectfully, your obedient servant,

WM. A. GRAHAM.

B. H. SPRINGER, Esq., *Washington.*

NAVY DEPARTMENT,  
*April 3, 1852.*

GENTLEMEN: You are hereby appointed the agent of the department for furnishing coal for the use of the United States squadron in the East Indies and China seas and Pacific ocean.

The coal is to be delivered at such times and places, and such kinds



and quantities, as shall be required by the department or the commander of the squadron before mentioned.

The coal of each kind to be of the best description and quality for the use of war steamers, and be in all respects satisfactory to the officer who may order or require the supply.

For the coal purchased and delivered you will be paid the purchase money, cost of transportation, insurance and unavoidable expenses attending the same, and for your services as agent under this appointment you will be allowed and paid a commission of ten per cent. on the gross amount of supplies, including the above mentioned expenses; provided that, for all American coal shipped from the United States on this account, there shall be deducted from the above commission of ten per cent. the commission allowed the agents of the department for supplying coal within the United States.

Satisfactory evidence will be required that the accounts for coal supplied are fairly stated, and that no over charge appears, and payment will be made by the navy agent in New York on the presentation of said accounts, (including the commission of ten per cent. upon the gross amount less the home agent's commission,) duly certified as to quality and cost by the commander of the squadron for which the coal shall have been forwarded, and approved by the Chief of the Bureau of Construction, Equipment and Repairs.

It is to be distinctly understood that the commission of ten per cent., herein referred to as compensation for services, is declared and agreed to be in full for all demands on the part of the agent holding and accepting this appointment against the Navy Department for the transaction of any business in relation to procuring or supplying coal for the United States squadron in the East Indies and China seas and Pacific ocean.

This agreement will extend to the delivery of three thousand tons of coal, and may be further continued for an additional quantity of coal for a definite time, at the option of the parties respectively.

Be pleased to signify your acceptance or refusal of this appointment and the terms herein stated.

I am, respectfully, your obedient servant,

WM. A. GRAHAM.

Messrs. HOWLAND & ASPINWALL.

NAVY DEPARTMENT,

*Bureau of Construction, Equipment and Repairs, June 30, 1852.*

SIR: Messrs. Howland & Aspinwall, of New York, having been appointed by the department agents for the purchase and shipment of coal for the use of the steamers attached to the squadron in the China seas, you will be pleased to examine and inspect such anthracite coal as they may, from time to time, be directed to ship from the United States for that purpose.

Respectfully, your obedient servant,

W. B. SHUBRICK,  
*Chief of the Bureau.*

B. H. SPRINGER, Esq.,  
*United States Coal Agent, Philadelphia.*

## IN THE UNITED STATES COURT OF CLAIMS.

BENJAMIN H. SPRINGER *vs.* THE UNITED STATES.*Amended Petition.*

By leave of Court first had and obtained, and in amendment of his original petition, the claimant further states that, after receiving the letter of the Secretary of the Navy, dated 15th January, 1851, and appended to the petition, he inquired at the Navy Department upon what amount the commission of five per cent. allowed in said letter was to be estimated, and was informed that it would be upon the gross cost of the coal at the port to which it was to be shipped; that the Secretary had endorsed this explanation upon a similar letter addressed to John Jamison, the agent for bituminous coal; and that the same endorsement would be made upon the claimant's letter of appointment, if desired. The claimant, however, was satisfied with the verbal assurance thus given, which he expressly avers was authorized by the Secretary of the Navy; and he accordingly undertook the agency. The agreement was well understood by both parties, and the full commission was in all instances allowed and paid until the occasion stated in the original petition.

The petitioner further states that, at the time of receiving the letter of Commodore W. B. Shubrick, dated 30th June, 1852, he was apprized of the terms of the letter which the Secretary of the Navy, on the 3d April, 1852, had addressed to Messrs. Howland & Aspinwall. Upon the faith of these two letters, which are also appended to his original petition, and which the claimant construed as securing to him his usual full commissions, he obeyed the order for the inspection of coal purchased as therein contemplated. The claimant expressly alleges that he had no information, nor even suspicion, that any part of his commissions was to be withheld on account of the agreement with Howland & Aspinwall; on the contrary, he verily believes that it was the intention of the Secretary of the Navy to reserve and cause to be paid to him the full commission of five per cent. on the gross cost of all American anthracite coal which was to be shipped in pursuance of the arrangement aforesaid.

BENJAMIN H. SPRINGER.

Sworn to in due form.

## IN THE UNITED STATES COURT OF CLAIMS.

BENJAMIN H. SPRINGER *vs.* THE UNITED STATES.*Claimant's brief.*

The claimant was agent for the purchase of anthracite coal for the use of the navy, with a compensation of five per centum upon the gross cost of the coal at the point to which it was shipped. There is no controversy as to this measure of compensation, except on the coal shipped by Howland and Aspinwall for the use of the Japan squadron. The argument on behalf of the government is, that Howland and

Aspinwall performed most of the service, and therefore the claimant is not entitled to full compensation. To this the claimant replies :

*First.* The Secretary of the Navy had authority at any time to dismiss him from his agency, but there was no power to alter its terms without the knowledge and consent of the agent himself. So long as he was recognized as the agent he was entitled to the commissions due to his position.

*Second.* The claimant was able, ready and willing, and would have been bound by his agency to render all the services performed by Howland and Aspinwall for one half the compensation allowed to them. He had the requisite knowledge and experience, and still retained the confidence of the department, as shown by the order to inspect the coal. If the department chose to employ additional agents, and to give them additional compensation, the claimant's right to his full commission is not thereby taken away. A principal having appointed an agent to perform a certain duty with a stipulated compensation cannot refuse to pay the full amount, notwithstanding he may have subsequently appointed another agent, and although the latter may have performed the whole service.—(State vs. Chase, 3d Harris & Johnson, 182; Keener vs. Harrod & Brooke, 2d Md., 70; Russell on factors and brokers, 48th volume law library, 159 to 164, and authorities there cited; see also Edwards vs. Goldsmith, 16 Penn. St. Rep., 43.)

*Third.* The Secretary recognized the foregoing principle; for, in his contract with Howland and Aspinwall, he distinctly reserved "the home agent's commission"—the whole commission—that is to say, one half of Howland and Aspinwall's commission, or five per cent. on the gross amount.

*Fourth.* The commission allowed the claimant was an *entirety*—it could not be divided. Although its amount fluctuated with the distance and the varying expense of shipment, yet the commission was 5 per cent. on the gross cost at the place of delivery, and not upon the cost at any other place. It cannot be fairly maintained that for coal deliverable in Canton he was entitled to his commission only on the cost in New York. Such a measure of compensation would be arbitrary, and not based on any rational principle; for, since he neither bought the coal, nor shipped it to New York, the cost at that point can afford no data for estimating his commission. Such was not his agreement, as expressed in the original contract; and there is nothing from which his assent can be implied.

*Fifth.* The allowance to Howland and Aspinwall, upon the construction claimed by the government, was unreasonable, improvident, and extravagant. While this fact would not, of itself, confer any right on the claimant, it nevertheless affords a strong presumption that such was not the intention of the parties. The fair inference from the whole transaction would be that this large and unusual commission was allowed to the special agents only because the full compensation of the general agent was included in it, or reserved out of it.

BROWN, STANTON & WALKER,  
*Attorneys for the Claimant.*

*Statement of the amount of commissions paid to B. H. Springer, coal agent for the Navy Department, for anthracite coal purchased on account of the Bureau of Yards and Docks.*

For the year 1851.....	\$512 21
For the year 1852 .....	933 58
For the year 1853.....	1,023 22
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	2,469 01
	<hr/>

JOS. SMITH,  
*Chief of Bureau of Yards and Docks.*

*Statement of all the anthracite coal furnished and shipped by Messrs. Howland & Aspinwall, and inspected by Benjamin H. Springer, together with all the cost of freight and charges to the place of destination.*

Number of tons (accounted for,) 7,584 $\frac{34}{100}$ .	
Whole cost of freight and charges, including the commissions of Messrs. Howland & Aspinwall.....	\$109,784 96
Mr. B. H. Springer has received, for five per cent. commissions on the original cost of the coal.....	1,722 44
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*Full amount of compensation paid to Benjamin H. Springer by the United States Navy Department, during each and every year of his agency, in respect to anthracite coal, under the cognizance of the Bureau of Construction, &c.*

1851.		1852.		1853.		1854.	
May 13 ....	\$18 90	Jan. 7.....	\$129 47	Jan. 28 ...	\$184 11	July 12*..	\$214 00
July 8 ....	77 10	July 2.....	162 84	July 12 ...	391 68		
Oct. 2 ....	19 19	Oct. 7.....	90 12	Sept.* 9 ...	1,508 44		
				Sept. 30 ...	200 25		
	<hr/>		<hr/>		<hr/>		<hr/>
	115 19		382 43		2,284 48		214 00

\* For five per cent. commissions on original cost of coals shipped by Howland & Aspinwall

NAVY DEPARTMENT,  
*Bureau of Construction, &c., December 19, 1855.*  
Statement from the records of this bureau.

JOHN LENTHALL.

PHILADELPHIA, *July 1, 1853.*

SIR: I herewith enclose my quarterly account of coal purchased and shipped during the quarter ending June 30, 1853, together with the account of coal shipped by Howland & Aspinwall during the same period, and inspected by me in accordance with the order of the bureau.

I also enclose my account for commissions in part on coal shipped prior to the past quarter by Howland & Aspinwall, and by me inspected.

The total cost of the coal delivered not having yet been ascertained, my account includes only the amount received by Howland & Aspinwall up to the present, for anthracite coal shipped by them, and on which, agreeably to those agreements and the decision of the bureau, I am to receive five per cent.

I have therefore enclosed my account in triplicate, and respectfully ask that you will be pleased to approve and forward them to me.

With respect, your obedient servant,

B. H. SPRINGER.

SAMUEL HARTT, Esq.,

*Chief of the Bureau of Construction, Equipment, and Repairs.*

BUREAU OF CONSTRUCTION, &c.,  
*Navy Department, December 20, 1855.*

I certify that the above is a true copy.

JOHN LENTHALL,  
*Chief of the Bureau of Construction, &c.*



*Return of anthracite coal inspected by B. H. Springer, agent, during the quarter ending June 30, 1853, by order of the  
Bureau of Construction, Equipment, and Repairs.*

Date of bill of lading.	By whom shipped.	From what port.	Vessel's name.	Master.	Destination.	Tons.	Cost of coal.	Freig't and charges.	Total cost.	Com'n 5 p'r cent.	Remarks.
1853. June 30	Howland & Aspinwall.	Baltimore..	Ship Beverley.	B. F. Chase.	Shanghai...	358 $\frac{5}{16}$	-----	-----	-----	-----	-----

NAVY DEPARTMENT, BUREAU OF CONSTRUCTION, &C., December 20, 1855.

I certify that the above is a true copy.

JOHN LENTHALL, *Chief of the Bureau of Construction, &c.*

BENJAMIN H. SPRINGER.

PHILADELPHIA, *August 8, 1853.*

SIR: During the past month I received a letter from Howland & Aspinwall, dated July 16, in which they say "we have chartered the Rose Standish, which will be around to load in Baltimore in about ten days. She will take about 800 tons of anthracite. We will also load here, next week, about 1,000 tons of anthracite, and will advise you when you will be required."

On the 1st instant I received a letter from the Hon. the Secretary of the Navy informing me that he had deemed it advisable to discontinue the coal agency, and that I would receive no further orders as such, but that I should fill the orders I then had and make return to the bureau, &c., &c.

On the 2d instant I waited on you for orders regarding the two cargoes to be shipped by Howland & Aspinwall, and understood you to say that they were considered as orders on hand and that I should attend to the inspection of them. In accordance with this I repaired to New York, and, on the 6th instant, called on Howland & Aspinwall, and offered my services to inspect the coal, which they declined to receive, informing me that they had received an order from the department informing them that I was not to be called on and they were to ship it without inspection and that the order applied also to the vessel going from Baltimore. I accordingly left New York without seeing the coal they were shipping.

As my office makes me immediately subordinate to the bureaus, I have deemed it my duty to lay the facts before you, and hope it will meet your approbation.

With respect, your obedient servant,

B. H. SPRINGER.

SAM'L HARTT, Esq.,

*Chief of the Bureau of Const'n, Equip't and Rep's.*

NAVY DEPARTMENT, BUREAU OF CONSTRUCTION, &c.,  
*December 20, 1855.*

I certify that the above is a true copy.

JOHN LENTHALL,  
*Chief of the Bureau of Construction, &c.*

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NAVY DEPARTMENT, BUREAU OF CONSTRUCTION, &c.  
*August 29, 1853.*

SIR: The bureau has this day been directed by the Secretary of the Navy, in settling the accounts of Messrs. Howland & Aspinwall for coals furnished the department, "to deduct for coals inspected by Messrs. Jamieson & Springer within the United States, their commissions of five per cent. upon the cost of such coals at the port of shipment."

I have to inform you their accounts have been approved accordingly. On signifying your wish, the bureau will approve and forward to you your bills for the amount due, agreeably to the foregoing instructions. Respectfully, your obedient servant,

S. HARTT,  
*Chief of the Bureau.*

B. H. SPRINGER, Esq.,  
*Philadelphia, Pa.*

NAVY DEPARTMENT, BUREAU OF CONSTRUCTION, &c.,  
*December 20, 1855.*

I certify that the above is a true copy.

JOHN LENTHALL,  
*Chief of the Bureau of Construction, &c.*

PHILADELPHIA, *October 4, 1853.*

SIR: I have the honor to enclose my quarterly account of coal purchased and forwarded for account of the bureaus, during the quarter ending September 30. Also an account of coal shipped by Howland & Aspinwall during the same period named, which I had orders from your bureau to inspect. You will perceive by my account that I have given the amount of but one cargo of  $654\frac{5}{20}$  tons. In compliance with your orders, I offered my services to inspect the other two cargoes, but Howland & Aspinwall refused to have them inspected by me. I therefore claim that, having received orders from the bureau to inspect, the refusal of Howland & Aspinwall to permit an inspection shall not prevent my receiving full commissions on the two cargoes named.

With respect, your most obedient servant,

B. H. SPRINGER.

SAMUEL HARTT, Esq.,  
*Chief of the Bureau of Const'n, Equip't and Repairs.*

NAVY DEPARTMENT, BUREAU OF CONSTRUCTION, &c.,  
*December 20, 1855.*

I certify that the above is a true copy.

JOHN LENTHALL,  
*Chief of the Bureau of Construction, &c.*

*Return of anthracite coal purchased during the quarter ending September 30, 1853, by B. H. Springer, agent, for the use of the navy, under the cognizance of the Bureau of Construction, Equipment, and Repairs.*

Date of requisition.	By whom ordered.	To what place.	Tons ordered.	Date of shipment.	Vessel's name.	Master.	Destination.	To whom consigned.	Of whom purchased.	Tons shipped.	Cost per ton.	Freight per ton.	Cost of coal.	Cost of freight.	Commission 5 per cent.	Total cost.
1853. July 16	Sam <sup>l</sup> Hart	Navy yard, Kittery.	400	July 19	Schr. Manhattan.	H. L. Field.....	Navy yard, Kittery.	Jos. Smoot, com't.	F. Tyler & Co.	200	\$3 75	\$2 00	\$750 00	\$400 00	\$57 50	\$1,207 50
May 16	Do.....	.....do.....	300	July 27	Schr. Dresden....	W. Richardson...	... do ....	.....do.....	.....do.....	190	3 75	1 95	712 50	370 50	54 15	1,137 15
	.....	Navy yard, Norfolk.		Aug. 24	Schr. R. M. Jones.	P. Malone.....	Navy yard, Norfolk.	S. L. Breese, com't	Reppier & Bro	64	4 00	1 10	256 00	70 40	16 32	342 72
	Do.....	.....do.....		Aug. 27	Schr. Louisa Wil- son.	J. C. Smith ....	.....do.....	.....do.....	.....do.....	80	4 00	1 10	320 00	88 00	20 40	428 40
	Do.....	.....do.....		Sep. 5	Schr. Chas. Ford.	R. Hancock ..	.....do.....	.....do.....	.....do.....	111	4 25	1 05	471 75	116 55	29 41	617 71
	Do.....	.....do.....		Sep. 11	Schr. Sarah.....	R. Hurley .....	.....do.....	.....do.....	.....do.....	84	4 25	1 10	357 00	92 40	22 47	471 87
			700													4,205 35

PHILADELPHIA, September 30, 1853.

E. & O. E.

B. H. SPRINGER.

NAVY DEPARTMENT, BUREAU OF CONSTRUCTION, &c., December 20, 1855.

I certify that the above is a true copy

JOHN LENTHALL, Chief of the Bureau of Construction, &c.

BENJAMIN H. SPRINGER.

PHILADELPHIA, *July 1, 1854.*

SIR: I herewith enclose a concise list of the cargoes of coal shipped by Howland & Aspinwall, and inspected by me, which you will find to correspond with my quarterly accounts rendered.

On this account I have received \$1,508 44; the exact quantity of coal I cannot state; the cost I have never known; but the accounts are filed in your bureau, and I must appeal to you to state the amount. In this list I have included two cargoes by the *Rose Standish* and one other I did not inspect, but for which I claim full commissions, as facts will show I am fully entitled to, and I beg leave most respectfully to call your attention to these facts.

The honorable the Secretary of the Navy, under date of July 29, 1853, informed me that he had discontinued the coal agencies, but at the same time directed me to fill the orders I then had on hand. I had letters from Howland & Aspinwall, informing me that they would ship in a few days one cargo from New York, and one from Baltimore, and requested me to hold myself prepared to inspect it. Having received information from the department that the agencies were abolished, on the 2d August I repaired to Washington for instructions, and waited on the bureau, stated the facts, and enquired if I was to consider them as old orders, and inspect them; your predecessor informed me that they were *to be considered as old orders, and ordered me to inspect them*; I accordingly repaired to New York, and on the 6th August I call on Howland & Aspinwall, and tendered my services; they refused to permit me to inspect the coal.

On the 4th October I presented my quarterly accounts to your bureau, and in my letter of that date I stated to your predecessor these facts, and claimed my commissions.

I have thus briefly given you the facts of the case on which my claim is founded and I appeal to you for justice.

Howland & Aspinwall accepted the terms offered by the Secretary of Navy; they are the recipients of 10 per cent. on gross amounts; the Navy Department, by their letter, guaranteed to retain for the home agents 5 per cent. on all American coal *shipped*; I claim, as an act of right, that the department retain for, and pay to me what they have by letter of April 3, 1852, agreed to do.

With respect, your obedient servant,

B. H. SPRINGER.

JOHN LENTHALL, Esq.,  
*Chief of the Bureau of Construction, &c.*

NAVY DEPARTMENT,  
*Bureau of Construction, &c., December 20, 1855.*

I certify that the above is a true copy.

JOHN LENTHALL,  
*Chief of the Bureau of Construction, &c*



*The United States Navy Department, Bureau of Construction, Equipment, and Repairs, to B. H. Springer, Dr., for commissions on the following coals shipped by Howland and Aspinwall, and inspected by me, per orders of the Bureau of Construction, Equipment, and Repair.*

1852.				
May	12	Ship Cassiterides.....	Shanghai.....	546 $\frac{7}{20}$
	25	Ship Lebanon.....	Macao.....	704
July	21	Barque Philomela.....	Honolulu.....	686 $\frac{19}{20}$
	21	Barque Tangier.....	do.....	604 $\frac{19}{20}$
	31	Brig Jacquelin and Elise.....	do.....	343 $\frac{12}{20}$
	31	Ship Gertrude.....	Macao.....	1,004 $\frac{19}{20}$
August	9	Barque Rienzi.....	Shanghai.....	554 $\frac{16}{20}$
October	21	Ship Talbot.....	Canton.....	238 $\frac{10}{20}$
	21	Ship Faneuil Hall.....	Capetown, or Macao.....	921 $\frac{11}{20}$
	30	Ship Singapore.....	Mauritius, or Macao.....	934 $\frac{9}{20}$
1853.				
March	26	Ship Bay State.....	Shanghai.....	537 $\frac{4}{20}$
June	30	Ship Beverly.....	do.....	358 $\frac{9}{20}$
July	15	Ship Roebuck.....	Macao.....	654 $\frac{2}{20}$
August	6	Ship unknown.....	.....	.....
	6	Ship Rose Standish.....	.....	.....

B. H. SPRINGER.

E. &amp; O. E., Philadelphia, June 30, 1854.

NAVY DEPARTMENT, BUREAU OF CONSTRUCTION, &amp;C.,

December 30, 1855.

I certify that the above is a true copy.

J. M. LENTHALL,

Chief of the Bureau of Construction, &amp;c.

NAVY DEPARTMENT,  
Bureau of Construction, &c., July 5, 1854.

SIR: Your letter of the 1st instant with its enclosure has been received.

It appears by the records of this bureau, that in addition to the amount already received by you, on account of American coal shipped by Messrs. Howland & Aspinwall, there is yet due for the "Beverly" and the "Roebuck," which were inspected by you whilst employed by the department.

Anything which you may claim of that character after the 29th July, when you state that the coal agencies were discontinued, can only be obtained by order of the department.

Respectfully, your obedient servant,

JOHN LENTHALL,

Chief of the Bureau.

B. H. SPRINGER, Esq.,  
Philadelphia, Pennsylvania.

NAVY DEPARTMENT,  
Bureau of Construction, &c., December 20, 1855.

I certify that the above is a true copy.

JOHN LENTHALL,

Chief of the Bureau of Construction, &amp;c.

WASHINGTON, *July 12, 1854.*

SIR: I have been handed your order of this date on the navy agent in Washington for two hundred and fourteen dollars. The order is in the form of a triplicate bill, and on the face would appear as if I had made it out and presented it to you for approval. This is not the fact; the bill (if any were presented) was not made by me, or with my knowledge or consent. The triplicate was made out in your bureau, and I presume by your order.

The bill declares that it is "for commission on coal shipped by Howland & Aspinwall, per Beverly and Roebuck, being five per cent. on \$4,280."

The amount of coal shipped by Howland & Aspinwall (with the exception of two cargoes which I was not allowed to see) has been regularly forwarded to the bureau in my quarterly accounts; the cost and charges I have never known, as the accounts have been rendered by them to your bureau, and I have had no access to them; I therefore request that I may be furnished with the gross amount of cost and charges of all the coal sent by the vessels named in the list forwarded to you on the 1st July.

The honorable Secretary, under date of July 29, 1853, informed me that he had abolished the coal agencies, and directed me "to complete the orders now in hand, and render your account to the proper bureau for final settlement." The orders then in hand have been completed long since, and a final settlement made with the Bureau of Yards and Docks; but as months must pass between the shipping of coal in the United States and the arrival in the China seas, and as the cost and charges could not be ascertained until it reached its place of destination, a final settlement cannot be made until then. I presume the amount is now ascertained as far as October, to cargoes mentioned in my list of the 1st July, and I respectfully ask that I may be furnished with the amount, to enable me to make a final settlement with the Bureau of Construction, Equipment and Repair.

The letter of Secretary Graham, dated April 3, 1852, and which constituted Howland & Aspinwall agents, allows to them 10 per centum commission on the gross amount of cost and charges of the coal at the place of destination, with this reservation: "*Provided*, That for all American coal shipped from the United States on this account, there shall be deducted from the above commission of ten per centum the commission allowed to the agents of the department for supplying coal within the United States."

The letter of the 3d April, 1852, further says, in reference to the payment of bills: "Payment will be made by the navy agent in New York, on the presentation of said account, (including the commission of ten per centum upon the gross amount, less the home agent's commission;)" and further, "and approved by the Chief of the Bureau of Construction, Equipment and Repair;" and, in a letter from Secretary Graham to Howland & Aspinwall, dated April 8, 1852, he says: "The commission of the agents is five per cent., and not one per cent., as you are led to suppose."

There, sir, you will perceive that I am entitled to five per cent. ou

gross charges of all coal shipped by the vessels included in the list furnished you on the 1st July, and further, that as you are to approve all bills paid on that account, you are required to retain for me five per cent. from all bills, for coal shipped by vessels transmitted in my list. I therefore respectfully ask, that so soon as the correct amount is ascertained, you will pay to me the amount I am legally and equitably entitled to, and enable me to make a final settlement with your bureau.

I will draw the money for the bills you sent me, \$214, and place it to the credit of the bureau, as so much on account, as I have done the sum of \$1,508 09, formerly received as in part payment.

With respect, your obedient servant,

B. H. SPRINGER.

JOHN LENTHALL, Esq.,

*Chief of the Bureau of Construction, Equipment and Repair.*

NAVY DEPARTMENT, BUREAU OF CONSTRUCTION, &c.,  
December 20, 1855.

I certify that the above is a true copy.

JOHN LENTHALL,

*Chief of the Bureau of Construction, &c.*

NAVY DEPARTMENT, *March 6, 1856.*

SIR: Complying with the order of the Court of Claims made in the case of "Benjamin H. Springer vs. The United States," communicated to this department in your letter of the 27th ult., I herewith enclose copy of a letter from the Chief of the Bureau of Construction Equipment and Repair, dated 5th inst., accompanied by "a detailed statement of the cost and charges on the coal shipped by Howland & Aspinwall whilst Mr. Springer was in the employment of the Navy Department."

I am, sir, very respectfully, your obedient servant,

J. C. DOBBIN.

SAM'L H. HUNTINGTON,

*Chief Clerk Court of Claims, Washington, D. C.*

NAVY DEPARTMENT, *December 29, 1856.*

SIR: I transmit herewith a copy of a communication from the chief of the Bureau of Construction, &c., to whom your letter of the 22d instant was referred, for the information desired by you in the case of B. H. Springer.

I am, respectfully, your obedient servant,

J. C. DOBBIN.

J. D. MCPHERSON, Esq.,

*Deputy Solicitor Court of Claims.*

Rep. C. C. 151—2

NAVY DEPARTMENT,  
*Bureau of Construction, &c., December 27, 1856.*

SIR: In compliance with the endorsement on the letter of the Solicitor of the Court of Claims, of the 22d instant, it is respectfully stated that when coal was actually purchased and shipped by direction of this bureau by the coal agents, they were paid five per cent. commission on the gross expenditures, but in the case of Messrs. Howland and Aspinwall, where they merely inspected the coal and had nothing to do with the shipment of it, the instructions of the department of the date of 23d August, 1853, was to deduct from the account of Howland and Aspinwall five per cent. on the cost of the coal at the port of shipment in the United States, and their accounts in that case were settled accordingly.

The letter of the Solicitor is herewith returned.

I have the honor to be, respectfully, your obedient servant,

JOHN LENTHALL,  
*Chief of the Bureau.*

Hon. J. C. DOBBIN,  
*Secretary of the Navy.*

*Quantity and cost of coal purchased by B. H. Springer.*

Name of vessel.	Date of ship- ment.	Place of ship- ment.	Number of tons.	Original cost of coal.	Insurance and custom-house charges.	Freight paid on coal.	Commissions paid Howland & Aspinwall.	Total cost of cargoes paid Howland & As- pinwall.	Amts. on which B. H. Springer has received commissions.
1852									
Cassiterides .....	May 12	New York..	546 $\frac{7}{20}$	\$2,247 35	\$71 25	\$5,463 50	\$778 21	\$8,560 31	\$2,247 35
Lebanon .....	May 25	do.....	672 $\frac{1}{4}$	2,951 75	(1)	(1)	(1)	11,076 56	2,951 75
Philomela .....	July 22	do.....	327 $\frac{19}{20}$	2,901 97	(2)	(2)	(2)	6,209 09	2,901 97
Tangier .....	July 22	do.....	604 $\frac{10}{20}$	2,542 42	87 30	9,067 50	1,169 72	12,866 94	2,542 42
Jacquelin and Elise.....	July 31	do.....	343 $\frac{13}{20}$	1,460 29	47 55	4,810 40	631 82	6,950 06	1,460 29
Gertrude .....	July 31	do.....	1,005 $\frac{30}{20}$	4,273 36	100 69	8,867 50	1,324 15	14,565 70	4,273 36
Rienzi .....	August 9	do.....	554 $\frac{18}{20}$	2,411 03	64 12	4,993 21	746 82	8,215 18	2,411 03
								Demorage	
								3,360 00	
Faneuil Hall.....	October 19	do.....	921 $\frac{11}{20}$	3,973 36	125 25	12,894 00	2,035 25	22,387 87	3,973 36
Talbot .....	October 21	do.....	228	1,017 16	(3)	(3)	(3)	3,611 84	1,017 16
Singapore .....	October 25	do.....	934 $\frac{9}{20}$	4,053 33	127 65	13,549 52	1,773 05	19,503 55	4,053 33
1853									
Bay State .....	March 31	do.....	434 $\frac{5}{20}$	2,336 83	(4)	(4)	(4)	9,714 56	2,336 83
Beverly .....	July 8	Baltimore..	358 $\frac{30}{20}$	1,433 00	71 49	5,015 50	651 99	7,171 98	1,433 00
Roebuck .....	Sept'r 24	do.....	653 $\frac{63}{100}$	2,847 00	175 39	9,159 50	1,218 18	13,400 07	2,847 00
								144,233 81	34,448 85

Total cost of cargoes paid Howland and Aspinwall.....

\$144,233 81

Amount deducted on which B. H. Springer has received commissions.....

34,448 85, upon which 5 per cent. is equal to \$1,722 44

109,784 96

- (1) Lebanon, 704 tons shipped, 32 $\frac{1}{2}$  tons lost .....
- (2) Philomela, 686  $\frac{19}{20}$  tons shipped, 359 tons lost .....
- (3) Talbot, 236  $\frac{14}{20}$  tons shipped, 8 $\frac{1}{2}$  tons lost .....
- (4) Bay State, 537  $\frac{4}{20}$  tons shipped, 102  $\frac{10}{20}$  tons lost.....

Upon the amount of coal lost Messrs. Howland & Aspinwall have received neither freight nor commissions. Mr. B. H. Springer has received commissions on the whole quantity shipped.

NAVY DEPARTMENT, BUREAU OF CONSTRUCTION, EQUIPMENT, AND REPAIR, March 5, 1858.

BENJAMIN H. SPRINGER.



B.

NAVY DEPARTMENT,  
*January 15, 1851.*

SIR: You are hereby appointed the agent of the Navy Department for the purchase of anthracite coal for the use of the navy.

You will receive a commission of five per cent. on the amount of all the purchases made by you in this capacity, which commission is to cover all expenses of selecting, purchasing and shipping the coal.

Your duty will be to select anthracite coal, under the direction of this department and its bureau, of the best quality adapted to the purpose for which it is to be used, and to ship it to such points as may be indicated.

I am, respectfully, your obedient servant,

WILL. A. GRAHAM.

B. H. SPRINGER, Esq., *Washington.*

C.

*Return of anthracite coal purchased during the quarter ending June 30, 1851, by B. H. Springer, agent, for the use of the navy, under the cognizance of the Bureau of Yards and Docks.*

Date of requisition.	By whom ordered.	For what place.	Tons ordered.	Date of shipment.	Vessel's name.	Master.	Destination.	To whom consigned.	Tons shipped.	Cost per ton.	Freight per ton.	Cost of coal.	Cost of freight.	Commission of 5 per cent.	Total cost.
1851. Apr. 16	Capt. H. A. Adams.	U. S. Naval Asylum, Phil.	50	1851. Delivered Apr. 24.	Schr. Maryland...	Jas. Taylor...	Navy yard, Wash.	Com. H. E. Ballard.	50	\$4 00	.....	\$200 00	.....	\$10 00	\$210 00
May 1	Com. H. E. Ballard..	Navy yard, Washington.	80	May 1	.....	.....	.....	.....	80	3 35	\$1 00	268 00	\$80 00	17 40	365 40
May 29	Capt. W. D. Galter.	Navy yard, New York.	150	June 16	Bark E. K. Price.	Thos. Irwin..	Navy Yard, N. York.	Capt. W. D. Galter..	158	3 90	.....	618 20	.....	30 81	647 41
									.....	.....	.....	1,084 20	.....	58 21	1,222 41

PHILADELPHIA, July 1, 1851.

True copy of the original exhibited by Joseph Smith on his examination and retained by him.

E. E.

B. H. SPRINGER, *Agent.*JOHN S. TYSON, *Commissioner.*

BENJAMIN H. SPRINGER.

D.

NAVY DEPARTMENT,  
July 29, 1853.

SIR: It having determined to discontinue the coal agencies of this department, you are hereby notified that no further orders will be issued to you for the supply of coal for naval purposes after this date. You will be pleased to complete the orders now in hand and render your accounts to the proper bureau for final settlement.

I am, respectfully, your obedient servant,

J. C. DOBBIN.

BENJ. H. SPRINGER, Esq., *Washington.*

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IN THE COURT OF CLAIMS.

UNITED STATES OF AMERICA, }  
*District of Columbia,* } *set.*

BENJAMIN H. SPRINGER *vs.* THE UNITED STATES.*Interrogatories on the part of claimant, and the deposition of Joseph Smith.*

1st interrogatory. What is your name?

Answer. Joseph Smith.

2d interrogatory. What is your occupation?

Answer. I am a captain in the navy, and chief of the Bureau of Yards and Docks.

3d interrogatory. What is your age?

Answer. I am over sixty years of age.

4th interrogatory. Where has been your place of residence for the past year?

Answer. In Washington, D. C.

5th interrogatory. Have you any interest, direct or indirect, in the claim which is the subject of inquiry in the above cause?

Answer. I have not the slightest.

6th interrogatory. Are you in any degree related to the claimant?

Answer. Not in the slightest.

7th interrogatory. How long have you been chief of the Bureau of Yards and Docks?

Answer. Since June, eighteen hundred and forty-six, up to the present time.

8th interrogatory. Examine the letter herewith filed, marked exhibit B, endorsed by the commissioner, and state whether it is a genuine order issued by the Navy Department and signed by the Secretary of the Navy?

Answer. It is a genuine order, signed by the Secretary of the Navy. I know of the fact of its issue, and the circumstances under which it was issued.

9th interrogatory. Please state whether, at any time after the writing of said letter, the said Secretary of the Navy authorized you,

or any other person, to inform Mr. Springer upon what amount the commission of five per cent., in said letter mentioned, would be estimated and allowed. State what arrangement was made in pursuance of such authority.

Answer. Mr. Graham, the Secretary of the Navy, about the time of the date of that letter—I think before—asked my opinion in regard to what would be a fair commission to allow the coal agents. I replied, for the purchase, inspection, and shipment of the coal, I thought five per cent. a fair commission. He ordered it so accordingly. And upon that principle I have settled ever since with coal agents, paying them five per cent. upon the gross cost, freight, and charges. I informed Mr. Springer, upon his inquiry after his appointment, that the Secretary had ordered the five per cent. to be paid on the gross cost of the coal, as before stated. The form herewith exhibited, marked C, and endorsed by the commissioner is the form in which I directed Mr. Springer to make out his accounts.

10th interrogatory. What are Mr. Springer's capacity and qualifications as a coal agent; and in what manner did he perform his duties as coal agent?

Answer. I believe Mr. Springer to be a most excellent judge of anthracite coal; and he performed his duty with great fidelity.

11th interrogatory. State whether the letter herewith filed (exhibit D) and endorsed by the commissioner, emanated from the Navy Department, and is signed by the Secretary?

Answer. I believe it emanated from the Navy Department, and that the signature is genuine.

12th interrogatory. Please say whether the coal agencies have or have not been re-established in the same manner as aforesaid since the date of said letter. If yea, for what reasons?

Answer. The coal agencies have since been established in the same manner and on the said terms. So far as I know, I believe the reasons are, that the navy agents were authorized to purchase coal, which plan it was found did not answer so well as the purchase through coal agencies.

13th interrogatory. Do you remember to have paid Mr. Springer his commissions for coal furnished after the date of the letter marked D?

Answer. At the date of the letter marked D, Mr. Springer had an order in his hands to supply coal which had not been completed. By said letter, marked D, Mr. Springer continued and completed the orders then in hand, and was paid accordingly.

*Cross-interrogatory by the Solicitor of the United States.*

Would not five per cent. upon the cost of the coal be a liberal compensation for merely inspecting it?

Answer. I think it would.

*Additional interrogatories on the part of the claimant.*

1st interrogatory. Please state whether the commission allowed the coal agent was for the mere labor of selecting and shipping the coal,

or whether it was or was not chiefly for his skill, judgment, and responsibility in selecting good coal?

Answer. The commissions paid to Mr. Springer, as coal agent, for his services, were for finding and purchasing the best quality of coal, and for shipping the same to the destination directed, as well as for his knowledge, by a long experience, in the coal business.

2d interrogatory. Do you know whether or not Mr. Springer abandoned his private business in the coal trade, in which he was engaged, for the purpose of devoting himself to his agency?

Answer. I have so understood. I think I told Mr. Springer that it would be expected of him to abandon his private coal business, and devote himself exclusively to the public agency.

[Mem. So much of the above answer objected to by the Solicitor of the United States as is hearsay evidence.]

3d interrogatory. Was or was not the coal shipped by Howland & Aspinwall much the largest and most profitable part of the coal agency?

Answer. From the operations of the steam vessels in the navy at the time, I should suppose that it was.

4th interrogatory. Would you consider five per cent. upon the first cost of the coal a fair compensation, when the agent had to travel at his own expense to New York or Baltimore to inspect single cargoes?

Answer. If the agent was required to travel from Philadelphia to Baltimore, at his own expense, and inspect a single cargo of coal, which cost fifteen hundred dollars, and be absent from home a week, five per cent. would not be a liberal compensation. It would leave him but a small amount as a compensation for his knowledge acquired by long experience and labor. In my answer to the cross-interrogatory of the Solicitor of the United States, I had reference to the mere inspection of coal where the coal agent resided.

Final interrogatory by the commissioner. Do you know any other matter relative to the claim in question?

Answer. Nothing further occurs to me.

JOS. SMITH.

DISTRICT OF COLUMBIA, ss.

On this thirteenth day of December, 1855, personally came Joseph Smith, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner, and then proposed by him to the witness; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of Joseph Smith, taken at the request of Benjamin H. Springer, to be used in the investigation of a claim against the United States now pending in the Court of Claims, in the name of Benjamin H. Springer.

The adverse party was notified, did attend, and did not object.

JOHN S. TYSON, *Commissioner*.



E.

NAVY DEPARTMENT,  
*Bureau of Construction, &c., June 30, 1852.*

SIR: Messrs. Howland & Aspinwall, New York, having been appointed by the department agents for the purchase and shipment of coal for the use of the steamers attached to the squadron in the China seas, you will be pleased to examine and inspect such anthracite coal as they may from time to time be directed to ship from the United States for that purpose.

Respectfully, your obedient servant,

W. B. SHUBRICK,  
*Chief of the Bureau.*

B. H. SPRINGER, Esq.,  
*U. S. Coal Agent, Philadelphia.*

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F.

NAVY DEPARTMENT,  
*Bureau of Construction, &c., May 10, 1853.*

SIR: I have to inform you that instructions have this day been given to Messrs. Howland & Aspinwall, New York, to ship for the use of the squadron in the China seas, five hundred tons of anthracite coal per month for four months to come.

Respectfully, your obedient servant,

W. B. SHUBRICK,  
*Chief of the Bureau.*

B. H. SPRINGER, Esq.,  
*U. S. Coal Agent, Philadelphia.*

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G.

NAVY DEPARTMENT.  
*Bureau of Construction, &c., August 16, 1853.*

SIR: I enclose herewith a copy of an order to ship three hundred tons of anthracite coal to Norfolk, under date of the 18th May last, but which the commandant of the yard informs the bureau has not been delivered. You will be pleased to forward this coal without further delay.

Respectfully, your obedient servant,

T. HARTT,  
*Chief of the Bureau.*

B. H. SPRINGER, Esq., *Philadelphia.*

H.

NAVY DEPARTMENT,  
*Bureau of Construction, &c., May 18, 1853.*

SIR: I enclose herewith a requisition from the navy yard, Gosport, for three hundred tons of anthracite coal, which you will be pleased to furnish at your early convenience.

Respectfully, your obedient servant,

WM. B. SHUBBICK,  
*Chief of Bureau.*

B. H. SPRINGER, Esq.,  
*U. S. Coal Agent, Philadelphia.*

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IN THE COURT OF CLAIMS.

UNITED STATES OF AMERICA, }  
*District of Columbia,* } ss.

BENJAMIN H. SPRINGER vs. THE UNITED STATES.

*The deposition of Philip C. Johnson.*

Interrogatory 1. What is your name?

Answer. Philip C. Johnson.

Interrogatory 2. What is your occupation?

Answer. I am chief clerk of construction, &c., in the Navy Department, and have been in that situation for more than ten years past.

Interrogatory 3. What is your age?

Answer. I am in my sixty-first year.

Interrogatory 4. Where has been your place of residence for the past year?

Answer. In Washington city.

Interrogatory 5. Have you any interest, direct or indirect, in the claim which is the subject of inquiry in the above case?

Answer. None.

Interrogatory 6. Are you in any degree related to the claimant?

Answer. In none.

Interrogatory 7. Examine the two letters herewith filed, marked, respectively, exhibit E and F, and endorsed John S. Tyson, commissioner, and state whether they emanated from the Bureau of Construction, Equipment, and Repair, and are signed by the chief thereof?

Answer. The letters were written by me and were signed by the chief of said bureau.

Interrogatory 8. Examine the papers herewith filed, marked exhibits G and H, and endorsed by John S. Tyson, commissioner, and state whether they are genuine orders emanating from the same bureau?

Answer. The letter marked G was written by me and signed by the then chief of bureau. The paper marked H was written in my hand,

and appears to be a copy of the original letter, which, I have no doubt, is correct, and was enclosed in the letter marked G.

Interrogatory 9. State whether or not, at any time during Mr. Springer's coal agency, you had occasion to inquire of the Secretary of the Navy as to the mode of estimating his commission. If yea, state what instructions you received from the Secretary.

Answer. If my recollection serves me, Mr. Springer presented an account for approval, embracing his commissions on the original cost of the coal, charges for shipment, freight, and so forth. I stated to Mr. Springer that I believed that his appointment did not specify that he was to have a commission on the cost of freight, and so forth. To which he replied: "It was understood by the Secretary of the Navy that his commission was to be estimated on the gross cost of coal and charges for freight, and so forth." I communicated the fact to the chief of the bureau, who requested me to ascertain the construction placed upon it by the Secretary. I applied to the chief clerk of the department, who informed me that it was intended by the Secretary that the commission should be estimated on the whole cost of coal, freight, and other charges of shipment.

Interrogatory 10. What circumstance led you to question the construction placed by Mr. Springer upon his letter of appointment?

Answer. The fact that on Mr. Jamison's appointment as agent for the purchase of bituminous coal, the construction was made clear by an endorsement by the Secretary. Mr. Springer's letter of appointment was in the same or similar language with Mr. Jamison's, without such endorsement.

Interrogatory 11. Was or was not Mr. Springer uniformly paid, according to the instructions you received from the chief clerk?

Answer. My impression is that he was.

Interrogatory 12. Do you remember a shipment of coal to Montevideo by Mr. Springer, and the commission allowed?

Answer. I recollect the shipment, and my impression is that the commission was estimated in the same manner as for other shipments; that is, according to the instructions I received from the chief clerk, which I regarded the same as if coming to me directly from the Secretary.

Interrogatory 13. Have you any knowledge of Mr. Springer's accounts for inspection of coal shipped by Howland & Aspinwall? If yea, state what was the commission charged, and whether the same was disputed by the bureau.

Answer. I know that Mr. Springer presented an account for commissions on shipments made by Howland & Aspinwall, estimated on the same terms as those on shipments made by himself, which, according to my recollection, the bureau refused to approve, consenting to allow only his commission on the first cost of the coal.

Interrogatory 14. Do you know whether any cargoes of the coal mentioned in the bureau's letter of the 10th of May, 1853, marked, as aforesaid, Exhibit F, had been altogether omitted from Mr. Springer's accounts, and payment of his commissions refused by the bureau? If yea, state the grounds of refusal, the amount of the coal, and all the circumstances, as far as you can.

Answer. My recollection is not sufficiently clear to enable me to state definitely. My impression is, however, that Mr. Springer charged commission on two cargoes of coal ordered to be shipped by Howland & Aspinwall prior to his discharge as coal agent, but shipped subsequently, which, Mr. Springer informed me, Howland & Aspinwall refused to suffer him to inspect.

Interrogatory 15. Do you remember having directed Mr. Brunaugh to make out the account filed with his deposition, marked A, and was or was not that account received and filed in the bureau without objection at the time?

Answer. I have no distinct recollection of having given such directions to him, although I think it more than probable that I did so. Nor do I recollect that the account was left with the bureau, although I have no doubt of the fact.

16th interrogatory. Was or was not the coal shipped by Howland & Aspinwall by far the largest portion of coal shipped by the Navy Department during Mr. Springer's agency?

Answer. I have no doubt that it was.

17th interrogatory. Was or was not a large proportion of the coal shipped by Howland & Aspinwall purchased in England or Wales?

Answer. A very considerable portion was foreign coal.

18th interrogatory. Was or was not the commission of ten per cent. on the gross cost of this foreign coal paid to Howland & Aspinwall?

Answer. I think it was.

19th interrogatory. What are Mr. Springer's capacity and qualifications as a coal agent, and in what manner did he perform his duties as such agent?

Answer. I never heard of any dissatisfaction expressed as to his capacity or the manner in which he had performed his duties.

20th interrogatory. Please state whether the coal agencies have or have not been re-established within two years, and placed upon their former footing with regard to commissions, and so forth?

Answer. They have so far as our bureau is concerned.

21st interrogatory. Please state how many coal agents the Navy Department now has, and whether or not they are required to purchase all the American coal used in the navy?

Answer. So far as relates to our bureau there is one agent for the purchase of anthracite coal and one for bituminous, to whom all orders are given for the purchase of coal for the navy.

22d interrogatory. Was or was not the arrangement of these agencies existing prior to Howland & Aspinwall's employment to furnish coal to the Japan squadron precisely the same as that now adopted by the Navy Department?

Answer. I think it was.

Cross interrogatories by the Solicitor of the United States:

Cross interrogatory, 1st. Have any payments been made to the claimant on account of the inspection of the shipments made by Howland & Aspinwall?

Answer. There have; five per cent. on the original cost of the coal.

2d interrogatory. Did Mr. Springer receive that payment under protest?

Answer. He received it under a verbal protest, which was made at the time when the bills were approved. There was not (to my knowledge) any written protest filed ; such a protest could not probably be in my office without my knowledge.

By the commissioner :

Interrogatory. Do you know any other matter or thing relative to the claims in question?

Answer. Nothing occurs to me.

P. C. JOHNSON.

DISTRICT OF COLUMBIA, ss.

On this thirteenth day of December, 1855, personally came Philip C. Johnson the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by the commissioner and then proposed by him to the witness ; and the answers thereto were written down by the commissioner in the presence of the witness, who then subscribed the deposition in the presence of the commissioner. The deposition of Philip C. Johnson, taken at the request of Benjamin H. Springer, to be used in the investigation of a claim against the United States, now pending in the Court of Claims, in the name of Benjamin H. Springer. The adverse party was notified, did attend, and did not object.

JOHN S. TYSON,  
*Commissioner.*

Fees of witness, \$1 50 ; commissioner's fees, deposition, \$3 20 ; oath, 10 cents ; copy of deposition and exhibits, \$2 40—\$5 70.



## EXHIBIT A.

*The United States Navy Department, Bureau of Construction, Equipment, and Repair, to B. H. Springer, Dr., for 5 per cent. commission for inspecting coals shipped by Howland & Aspinwall to various ports of China, as follows:*

1852.			
May	12	Per "Casseterides" to Shanghai, 546 $\frac{7}{20}$ tons .....	\$2,318 60
		Freight on same, at \$10 per ton .....	5,463 50
	25	Per "Lebanon" to Macao, 704 tons .....	3,029 60
		Freight on above, at \$10 per ton .....	7,040 00
July	31	Per "Philomela" to Honolulu, 686 $\frac{9}{20}$ tons .....	3,009 92
		Freight bill not yet paid .....	.....
		Per "Tangier" to Honolulu, 604 $\frac{10}{20}$ tons .....	2,629 72
		Freight on above, at \$15 per ton .....	9,067 50
		Per "Jacqueline & Elise" to Honolulu, 343 $\frac{3}{20}$ tons .....	1,507 84
		Freight on above, at \$14 per ton .....	4,810 40
		Per "Gertrude" to Macao, 1,005 $\frac{10}{20}$ tons .....	4,374 05
		Freight on above, at \$10 per ton, on 886 $\frac{3}{4}$ tons, (having fallen short by measurement abroad) .....	8,867 50
August	9	Per "Rienzi" to Shanghai, 554 $\frac{18}{20}$ tons .....	2,475 15
		Freight on above, at \$9 per ton .....	4,993 20
October	21	Per "Talbot" to Macao, 236 $\frac{10}{20}$ tons .....	1,037 61
		Freight bill not yet paid .....	.....
		Per "Fanueil Hall" to Macao, 921 $\frac{11}{20}$ tons .....	4,098 61
		Freight bill not yet paid .....	.....
	30	Per "Singapore" to Mauritius, 934 $\frac{9}{20}$ tons .....	4,180 98
		Freight bill not yet paid .....	.....
1853.			
March	31	Per "Bay State" to Shanghai, 537 $\frac{4}{20}$ tons .....	2,411 83
		Freight bill not yet paid .....	.....
		Total .....	71,316 01
		My commission at 5 per cent. on above .....	3,565 80

NAVY DEPARTMENT,

*Bureau of Construction, Equipment, and Repair, 18 .*

Approved, in triplicate, for \_\_\_\_\_ dollars and \_\_\_\_\_ cents, payable by the navy agent at \_\_\_\_\_.

\_\_\_\_\_. Chief of the Bureau.

## IN THE COURT OF CLAIMS.

UNITED STATES OF AMERICA, *District of Columbia, et:*

BENJAMIN H. SPRINGER, *vs.* THE UNITED STATES.

*On the part of Claimant.*

The deposition of John W. Bronaugh.

Interrogatory 1st. What is your name?

Answer. John W. Bronaugh.

Interrogatory 2d. What is your occupation?

Answer. I am a clerk in the Navy Department.

Interrogatory 3d. What is your age?

Answer. I am forty-one years of age.

Interrogatory 4th. Where has been your place of residence for the past year?

Answer. In the District of Columbia.

Interrogatory 5th. Have you any interest, direct or indirect in the claim, which is the subject of inquiry in the above case?

Answer. None at all.

Interrogatory 6th. Are you in any degree related to the claimant?

Answer. I am not.

Interrogatory 7th. How long have you been acting as clerk in the Navy Department?

Answer. Between four and five years.

Interrogatory 8th. Look at the account herewith filed, marked exhibit A, and endorsed by the commissioner, and state whether or not it is in your handwriting?

Answer. The said account is in my handwriting.

Interrogatory 9th. By whose instructions did you estimate the commission upon the freights charged in said account and why did you leave the blanks which appear in several items of the same?

Answer. I made the estimate referred to at the request of the claimant, Springer, with the consent of the chief clerk of the bureau. I know of no reason why I left the above blanks, except it was that the freight bill, had not been received and their amounts known. My object in so stating this account was to afford Mr. Springer an opportunity of presenting in this shape to the chief of the bureau and Secretary of the Navy, and not as an admission that the amount of said account was due to Mr. Springer in that shape.

Interrogatory 10th. Do you know whether the said account was presented to the chief of the bureau?

Answer. I believe it was.

Interrogatory 11th. Was it or was it not assented to as correct?

Answer. I believe it was not. My belief is that the chief of the bureau took the position that Mr. Springer was entitled to five per cent. on the original cost of the coal embraced in said account, but not to five per cent. on freight, as stated in said account. The above position was taken either by Secretary of the Navy or the chief of the bureau, I am not positively certain which.

Interrogatory 12th. Do you know any other matter or thing relative to the claim in question?

Answer. I do not.

JOHN W. BRONAUGH.

DISTRICT OF COLUMBIA, ss.

On this 13th day of December, A. D., 1855, came John W. Bronaugh, the witness within named, and after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down by commissioner and then proposed by him to the witnesses; and the answers thereto were written down by the commissioner in the presence of the witness; who then subscribed the deposition in the pre-

sence of the commissioner. The deposition of John W. Bronaugh, taken at the request of Benjamin H. Springer, to be used in the investigation of a claim against the United States, now pending in the Claim Court of in the name of Benjamin H. Springer.

The adverse party was notified, did attend, and did not object.

JOHN S. TYSON,  
*Commissioner.*

Fee of witnesses one day, \$1 50.

Commissioner's fees, including department copy of deposition and copy of exhibit, \$2 30.

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IN THE COURT OF CLAIMS.

BENJAMIN H. SPRINGER *vs.* THE UNITED STATES.

The testimony of John G. Repplier. Interrogatories on the part of the petitioner.

Interrogatory 1. What is your name?

Answer. John G. Repplier.

Interrogatory 2. What is your occupation?

Answer. I am in the coal business.

Interrogatory 3. What is your age?

Answer. About forty years.

Interrogatory 4. Where has been your place of residence for the past year?

Answer. In the city of Philadelphia.

Interrogatory 5. Have you any interest, direct or indirect, in the claim which is the subject of the present inquiry?

Answer. I have none at all.

Interrogatory 6. Are you related to the claimant? If yea, in what degree?

Answer. I am not related to the claimant in any degree.

Interrogatory 7. State what is the usual custom among coal dealers in the United States in the purchase and shipment of coal, particularly as to what trouble or expense falls upon the purchaser in making such shipment?

Answer. The purchaser is at no trouble or expense of shipping. The seller of the coal puts it on board of vessels free of expense to the purchaser.

Interrogatory. Please state what is the relative importance and value of the purchase and shipment of coal on the one hand, and the inspection of it on the other, supposing these to be performed by different persons, and both faithfully done?

Answer. The inspection of the coal is decidedly the most important and of most value to the persons interested in the use of the coal. The man who only purchases and ships and does not inspect, has only to give an order, and no further personal attention from him is required; while the one who inspects must give his personal attention,

and see that the coal is of proper quality, shipped in good order, and that full weight is given.

Interrogatory. Is there any trouble or expense to the shipper in the chartering the ships to carry the coal?

Answer. There is very little trouble and no expense to the agent who ships. He has only to give an order to a ship broker, and the ship itself pays the broker's commission.

Interrogatory. If the agent shipping large quantities of coal were himself an owner of vessels, would or would not the opportunity to make such shipments be of great advantage to him, independent of any commission.

Answer. I should think it would be of very great advantage to him, as he would save the entire broker's commission, which is two and a half per cent.

Interrogatory. Were you, or not, acquainted with Mr. Springer's mode of performing the duties of coal agent, while he held that position under the Navy Department? State what you know on the subject.

Answer. Mr. Springer purchased coal of our firm, while coal agent of the United States, and invariably he or his son gave the shipment of it his personal attention. I believe him to have been and to be perfectly competent, conscientious, and faithful to the trust reposed in him.

Interrogatory. How long have you been in the coal trade, and are you well acquainted with its usages?

Answer. I have been in the coal trade about ten years, and acquainted with its usages about eighteen years.

Interrogatory. Is it, or not, usual to have general agents for the sale of coal for particular mines, districts, or regions? If so, state whether or not the agent is allowed his whole commission on all the coal disposed of within his district, although he may not personally make the sale.

Answer. The proprietor or operator of the mine usually selects his agent or agents to sell his coal, and the usual custom is to pay that agent, on all coal sold in the district for which he is appointed, a commission, whether he sells it personally or not, or whether it is sold by the proprietor.

### *Cross Interrogatories.*

Questions on part of the United States:

Question 1. Will you state whether there are agencies for private persons or corporations corresponding to the agencies for the government? If not, state how the business for such persons is conducted.

Answer. There are no corresponding agencies. The business is conducted by agents for the mines or collieries, who are appointed in different parts of the country, who sell the article. Its shipment to the different ports where it is required is superintended by the miner or the owner of the coal, for it sometimes passes through several hands.

Question 2. Is the character of the different mines established and known so that purchasers can know what article they buy, and the mine from which it comes is known.

Answer. The character of the mines is not established and known except to dealers and those conversant with the business, and the coal from the same mine varies in quality, and its excellence depends also upon the manner in which it is shipped, whether in good order or otherwise, whether well screened or left with dust in it.

Question 3. State what is the inspector's duty, and what that of the shipper.

Answer. I do not know of any inspectors of coal save the agents for the government, and they superintended the shipment also.

Question 4. When you say, in your examination in chief, that the inspector is most important, say whether you do not include, in the duties of the inspector, the duty of superintending the shipment, which is usually performed by the government agent.

Answer. I do.

Question 5. Supposing that the duties were divided, one person merely selecting the coal which was to be shipped, and another superintending its shipment and seeing that both the quantity was right and that it was put aboard in proper order, and giving his personal attention to it as it went aboard, which service would you regard as entitled to the highest payment?

Answer. The person who superintended the shipment.

Question 6. Would you think  $2\frac{1}{2}$  per cent. on the cost of the coal a reasonable allowance for such selection?

Answer. It would depend upon the quantity purchased. If there was much to be selected, that would pay well, but it would not be sufficient if there was a small amount only.

Question 7. Is not  $2\frac{1}{2}$  per cent. the ordinary allowance to brokers?

Answer. The amount varies: sometimes it is as low as one per cent., and again it is as high as ten.

Re-examined by the counsel for the claimant:

Interrogatory. If one party were appointed to purchase and ship coal and another to inspect it, for the purpose of insuring its suitability for naval steamers, which of these duties would be most important and entitled to most pay?

Answer. I should say decidedly the inspector.

Interrogatory. Do you know of any other matter relative to the claim in question?

Answer. I do not.

JNO. G. REPPLIER.

UNITED STATES OF AMERICA, }  
District of Columbia, } ss.

On this seventh day of March, A. D. 1856, personally came John G. Repplier, the witness within named, and, after having been first sworn to tell the truth, the whole truth, and nothing but the truth, the questions contained in the within deposition were written down



and then proposed to the witness; and the answers thereto were written down in the presence of the witness, who then subscribed the deposition in the presence of the commissioner.

The deposition of John G. Repplier, taken at the request of the claimant, to be used in the investigation of a claim against the United States now pending in the Court of Claims in the name of Benjamin H. Springer by the consent of the United States Solicitor.

JOHN H. TYSON,  
*Commissioner.*

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BENJAMIN H. SPRINGER *vs.* THE UNITED STATES.

*Brief for the final trial.*

Supposing the principles argued on the preliminary hearing to have been settled by the decision of the Court made on that occasion, the claimant insists that he has proved all the material facts alleged in his original and amended petitions.

1st. The letter of appointment of January 15, 1851, is proved by the deposition of Commodore Joseph Smith, chief of the Bureau of Yards and Docks. This officer also establishes the fact that, after the receipt of that letter, upon the inquiry of the claimant, he gave assurance that the commissions would be allowed on the gross amount of cost, freight, and charges. This assurance was given after the appointment and in explanation of its terms. It was, therefore, a part of the contract.

The same fact is proved by the deposition of Philip C. Johnson, with the additional fact, as alleged in the petition, that, in the case of the agent for bituminous coal, this explanation of the contract was endorsed in writing on the letter of appointment. The parol assurance was equally as valid as the written.

2d. It is also well established, by both the said witnesses, that the coal agents were uniformly paid according to this understanding of the contract. This construction was not only fixed by positive agreement, subsequent to the letter of the 15th of January, 1851, but it was further established and confirmed by the usage of the parties in their regular fulfillment of the contract. In this state of facts, it must be acknowledged, as beyond all controversy, that the claimant's stipulated commissions were to be five per cent. on the gross amount of cost, freight, and charges upon all coal to which their agency extended.

3d. If the foregoing positions be established, then the reservation of the "home agent's commission," in the Secretary's letter to Howland and Aspinwall of the 3d April, 1852, was nothing less than the whole commission to which he was entitled by the settled construction of his contract with the department. This commission was an entirety, and could not be divided or diminished upon any just principle whatever.

4th. The whole circumstances of the case conspire to show, that the double agency of the claimant, and of Howland and Aspinwall, was

based upon the ground of an equal division of the commissions, arising from their joint action as to all anthracite coal shipped from the United States. This is not only the true legal interpretation of the Secretary's letters, but it is also the only fair adjustment of the rights of the respective parties. The contrary principle would reduce the claimant's compensation to a mere trifle, while it would raise that of Howland and Aspinwall to a most unusual and extravagant figure.

5th. The relative value of the services of the claimant and of Howland & Aspinwall, is fully established by the testimony of John G. Repplier. This witness also proves the custom of allowing full commissions to the agents for selling coal, even when they do not personally make the sale.

Commodore Smith proves that the claimant was required to give up his private business as a coal dealer, in order the more impartially and faithfully to perform his duty to the government.

All the witnesses testify to the capacity and fidelity of the claimant.

6th. From the beginning to the end of his service, the claimant always asserted his right to the full commissions. His accounts were rendered upon this basis.—(See Bronaugh's deposition. See also all the correspondence; and especially claimant's letter to Samuel Hart, chief of the Bureau of Const., Eq. and Rep., dated 1st July, 1853; and his two letters to the Secretary of the Navy, dated respectively the 23d July and the 11th August, 1853.)

The letter from S. Hart, chief of the bureau, to the claimant, of date the 29th August, 1853, was the first official intimation that the full demand would not be allowed. Thus the claimant was induced to render his services up to the very expiration of his agency with the just expectation of receiving his full commissions, and without any information to the contrary until after his dismissal. It was not just or lawful to withhold them then.—(*Harvey vs. Turner & Co.*, 4 Rawle's Pa. 230.)

7th. Upon these facts, and the authorities cited upon the preliminary hearing, the claimant is entitled to five per cent. of the gross cost, freight and charges upon all coal inspected by him, amounting by the accounts from the department, to \$                      for which we ask the judgment of the Court.

Story on Contracts, sec. 22.

2 Parsons on Contracts, p. 31.

FRED. P. STANTON,

*For the Claimant.*

## IN THE COURT OF CLAIMS

## ON PETITION OF B. H. SPRINGER.

*Brief of United States Solicitor.*

The claim is for five per cent. on the amount paid for the anthracite coal inspected by claimant, and five per cent. on the amount of freight and other charges, as compensation for his services.

The letter of appointment stipulates *expressly* that the compensation is to be five per cent. on the purchases; and the letter to Howland & Aspinwall repeats that this is the rate.

The attempt is made, however, to vary this by parol proof that the understanding was otherwise. I object to the claim on the ground that it is compensation for an agency or office which was not and is not authorized by law, and the department had no right to establish such an agency or office. If the agency be regarded as legal, the contract is contained in the letter of appointment, and its effect cannot be varied by parol proof.—(Hunt *vs.* Rousmanner, 8 Wheat., 174; Cowan & Hill's Notes, vol. 2, p. 593, and cases cited.)

The evidence of the construction may be admissible, because practice under an act is a legitimate mode of argument as to what is the construction; but is not conclusive, and if against the plain meaning of the language of the contract, must be disregarded.—(Cowan & Hill's Notes, p. 564, vol. 2.)

III. The practice, &c., states also agency for purchase, and not as compensation for inspection, and does not, therefore, apply.

IV. It is argued that the Secretary could not change the compensation; but this is not an agency or office created by law, and therefore, if legal at all, it is subject to the entire control of the Secretary.

V. The services rendered here are not those stipulated for in the original employment, and he can recover nothing but a *quantum meruit*, and Smith testifies that five per cent. was a liberal compensation.

VI. Bronough's testimony on the construction of the contract—conflicting with Com. Smith's testimony—shows that the statement of the petition is not sustained by the claimant's own witness, even if it be competent to vary the written contract by parol testimony.

VII. It appears by Springer's letter that the consideration for the ten per cent. to Howland & Aspinwall was the advance and payment of money for the purchase of coal, freight, charges, &c. The same thing was true of consideration for payment of five per cent.; but here there were no such advances by Springer.

VIII. Repplen's testimony shows that the duty of inspection is less onerous and less important than that of superintending the shipment. With respect to this coal, Springer did nothing but inspect. The witnesses say that if there was a large amount shipped, two and a half per cent. was a liberal commission for inspection.

IX. Letter of July 23, 1853, from Springer, refers to letters to Aspinwall as showing that he was entitled to five per cent. on the gross amount. Now these letters expressly fix the compensation at five per cent. on purchase money of coal. He makes no allusion to this fact in his petition, though it now appears he knew all about it.

X. No evidence is adduced to show that Springer claimed more than five per cent. on the purchase, till July 1, 1853. The answer is given August 29. Was this an unreasonable delay in rejecting the claim?

XI. But whilst it is true that Springer claimed in 1853 five per cent. on the gross amount, his argument (see his letters of July 23, and August 11, 1853) is based on entirely different grounds from that upon which it is here attempted to sustain it. There he attempted only to show that the allowance to Howland & Aspinwall was excessive. True, that he says "the late Secretary, Mr. Graham, gave it as his opinion that the agents were to receive commissions on the gross amount; the late chief of the bureau agreed that his construction of the agreement also gave the same;" but he nowhere says or pretends that there was any *express agreement* to this effect, as he now pretends. Then it was but construction, and he endeavors to support the construction by reference to the letters of April 6, 1852, from Howland & Aspinwall, and of April 8, 1852, in reply. But now, in stating his case, he takes care not to include those letters, because they show conclusively that Howland & Aspinwall, in assenting to the contract set forth in the letter of April 3, say they understand the deductions to be made from their commissions, for the inspectors, "to be one per centum upon the cost of the coal at the port of shipment." In reply, the Secretary informs them "that the commission allowed to agents for inspecting coal, under the Navy Department, is five per cent., and not one per cent., as you were led to suppose."

He sets off now, in his petition, that it was not matter of construction that he was to have five per cent. on the gross amount, but matter expressly agreed to when he accepted the contract, and alleges an offer to endorse it on the contract; but there is no proof of any such offer, or of any fact from which it can be inferred.

Com. Smith's testimony only proves that he told Springer, *after his appointment*, that the Secretary had ordered five per cent. to be paid on the gross cost of the coal, *as before stated*. He had before stated that he had ordered five per cent. to be paid—not five per cent. on the gross cost. Now, when this language is compared with Springer's own letter, above quoted, it is manifest that Com. Smith's conclusion was founded on a construction of the letter from Mr. Graham to Springer.

Mr. Johnson, the clerk in the office, whose testimony is relied on to prove a different contract from that in writing, merely proves that the chief clerk construed it as allowing commission on the gross cost; while Mr. Bronough's testimony goes to prove that the Secretary entertained altogether different views.

There is not a word of testimony going to show that a different contract was entered into than that set forth in writing. All that is offered is to prove a different construction, by certain officers, from that which the present Secretary put on it. Neither Com. Smith nor Johnson, or any one else, pretends to say that Springer ever did more than inquire as to the construction. No time is fixed by them when the inquiry was made; and no circumstance is proved from which it could be inferred that he had not accepted and acted on his appointment before such inquiry, or that the answer given by them was the reason of his acceptance; and even this would be immaterial, for they had no right to vary the contract. They do not pretend that they were authorized to vary it. The Secretary is the only person who could vary it, and it is not shown that his attention was ever called to the subject after the contract was signed.

M. BLAIR.

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#### IN THE COURT OF CLAIMS.

BENJ. H. SPRINGER *vs.* THE UNITED STATES.

SCARBURGH, J., delivered the opinion of the Court:

On the 15th day of January, A. D. 1851, the Secretary of the Department of the Navy, by a letter of that date, addressed to the petitioner, says: "You are hereby appointed the agent of the Navy Department for the purchase of anthracite coal for the use of the navy.

"You will receive a commission of five per cent. on the amount of all purchases made by you in this capacity, which commission is to cover all expenses of selecting, purchasing, and shipping the coal."

\* \* \* \* \*

The petitioner, in his amended petition, alleges that after receiving this letter, he inquired at the Navy Department upon what amount the commission of five per cent. therein allowed was to be estimated, and was informed that it would be upon the gross cost of the coal at the port to which it was to be shipped; that the Secretary had endorsed this explanation upon a similar letter addressed to John Jamison, the agent for bituminous coal, and that the same endorsement would be made upon the claimant's letter of appointment, if desired. He further alleges that he was satisfied with the verbal assurance thus given, which he expressly avers was authorized by the Secretary of the Navy, and he accordingly undertook the agency.

The petitioner also alleges that his contract was understood by both parties according to the explanation given to him at the Department



of the Navy, and a commission of five per cent. upon the gross cost of the coal at the port to which it was shipped, whether that port was in the United States or a foreign port, until the 29th day of August, A. D. 1853, when he was informed by the Bureau of Construction, Equipment, and Repairs, that he would be allowed a commission of five per cent. only upon the cost of the coal at the port of shipment; and that "upon this basis his accounts have been made out by the bureau and paid; always, however, with a protest on his part and a demand of payment according to his understanding of the agreement and the former usages of the department."

Joseph Smith, a captain in the navy, and chief of the Bureau of Yards and Docks, testifies that the Secretary of the Navy, about the date of the letter of the 15th day of January, A. D. 1851, (he thinks before) asked his opinion in regard to what would be a fair commission to allow coal agents. His opinion was, that for the purchase, inspection, and shipment of the coal, five per cent. would be a fair commission. The Secretary so ordered; and upon that principle the witness has ever since settled with coal agents, paying them five per cent. upon the gross cost, freight, and charges. He further testifies, that he informed the petitioner upon his inquiry, after his appointment, that the Secretary of the Navy had ordered the five per cent. to be paid on the gross cost of the coal as above stated. There is annexed to his deposition a form, in which (he testifies) he directed the petitioner to make out his accounts. This form allows commissions at the rate of five per cent. on the cost of the coal and the freight.

Philip C. Johnson, the chief clerk of the Bureau of Construction, Equipment, and Repairs, testifies that the petitioner presented an account for approval, embracing his commissions on the original cost of the coal, charges for shipment, freight, &c.; that the witness suggested to him that his contract did not specify that he was to have commission on the freight, &c.; to which the petitioner replied that it was understood by the Secretary of the Navy that his commissions were to be estimated on the gross cost of coal, charges for freight, &c.; that, upon application by the witness to the chief clerk of the department, the latter informed him that it was intended by the Secretary that the commissions should be estimated on the whole cost of coal, freight, and other charges of shipment; and that his (the witness') impression is, that the petitioner was uniformly paid according to the instructions which he (the witness) received from the chief clerk. The witness recollects a shipment of coal made by the petitioner to Montevideo, and his impression is, that the commission was estimated in the same manner as for other shipments, that is, according to the instructions he received from the chief clerk, which he regarded the same as if coming to him directly from the Secretary. The witness further testifies that five per cent. on the original cost of the coal shipped by Howland & Aspinwall, and inspected by the petitioner, has been paid to the petitioner; and that the petitioner received it under a verbal protest which was made at the time when the bills were approved. There was not to his knowledge any written protest filed.

By a letter, dated April 3, A. D. 1852, addressed by the Secretary of the Navy to Messrs. Howland & Aspinwall, he appointed them the agents of the department for furnishing coal for the use of the United States squadron in the East India and China seas and Pacific ocean. In that letter the Secretary said: "For the coal purchased and delivered, you will be paid the purchase money, cost of transportation, insurance, and unavoidable expenses attending the same, and for your services as agent under this appointment, you will be allowed and paid a commission of ten per centum on the gross amount of supplies, including the above-mentioned expenses; provided that for all American coal shipped from the United States on this account, there shall be deducted from the above commission of ten per centum, the commission allowed the agents of the department for supplying coal within the United States."

By a letter from Howland & Aspinwall to the Secretary of the Navy, dated April 6, A. D. 1852, they accepted the appointment in the terms stipulated in the letter to them from the Secretary of the Navy, dated the 3d day of April, A. D. 1852, and added: "We also agree to allow out of the commission to be paid to us, to the inspectors of the department, heretofore appointed for inspecting coal used by the United States navy, within the United States, the commission they are entitled to under their arrangement with the department, which commission we understand to be one per centum upon the cost of the coal at the port of shipment."

By a letter, dated April 8, A. D. 1852, from the Secretary of the Navy to Howland & Aspinwall, he acknowledges the receipt of their letter of the 6th of April, then instant, "accepting the appointment of agent of the Navy Department for furnishing coal for the use of the United States squadrons in the East India and China seas and Pacific ocean, on the terms stipulated in the department's letter of the 3d instant," and informed them "that the commission allowed to agents for inspecting coal under the Navy Department is five per cent., and not one per cent., as you were led to suppose."

By a letter, dated April 19, A. D. 1852, from the Secretary of the Navy to Howland & Aspinwall, he requests them "to inform the department if you accept the appointment of agents for furnishing coal for the use of the United States squadrons in the East India and China seas and Pacific ocean, on the terms stipulated in the department's letter of the 3d inst., as explained in the letter of the 8th inst., in regard to the commission allowed the agents for inspecting coal under the Navy Department."

By a letter, dated April 21, A. D. 1852, from Howland & Aspinwall to the Secretary of the Navy, they say: "We beg leave to say, in answer to your letter of the 19th inst., just received, that we accept the appointment you have been good enough to make of us, as agents of the department for furnishing coal for the use of the United States squadron in the East India and China seas and Pacific ocean, on the terms stipulated in the department's letter of the 3d inst., and explained in that of the 8th."

By a letter, dated, June 30, A. D. 1852, from the chief of the Bureau

of Construction, &c., to the petitioner, the former says: "Messrs. Howland & Aspinwall, New York, having been appointed by the department agents for the purchase and shipment of coal for the use of the steamers attached to the China seas, you will be pleased to examine and inspect such anthracite coal as they may from time to time be directed to ship from the United States for that purpose."

By a letter, dated May 10, A. D. 1853, from same to same, the former says: "I have to inform you that instructions have this day been given to Messrs. Howland & Aspinwall, New York, to ship for the use of the squadron in the China seas five hundred tons of anthracite coal per month for four months to come."

By a letter, dated May 18, 1853, from same to same, the former says: "I enclose herewith a requisition from the navy-yard, Gosport, for three hundred tons of anthracite coal, which you will be pleased to furnish at your early convenience."

By a letter, dated August 16, A. D. 1853, from same to same, the former says: "I enclose herewith a copy of an order to ship 300 tons of anthracite coal to Norfolk, under date of the 18th May last, but which the commandant of the yard informs the bureau has not been delivered. You will be pleased to forward this coal without further delay."

By a letter, dated July 29, A. D. 1853, from the Secretary of the Navy to the petitioner, the former says: "It having been determined to discontinue the coal agencies of this department, you are hereby notified that no further orders will be issued to you for the supply of coal for naval purposes, after this date. You will be pleased to complete the orders now in hand, and render your account to the proper bureaus for final settlement."

From the 12th day of May, A. D. 1852, till the 25th day of September, A. D. 1853, Howland & Aspinwall received from the United States for coal, including the original cost of the coal, insurance, and custom-house charges, freight and commissions, the sum of \$144,233 81. The gross cost of the coal on which they received commissions was the sum of \$131,121 64. This sum does not include freight on the coal which was lost. The original cost of the coal was \$34,448 85, and upon this sum a commission of five *per centum*, amounting to the sum of \$1,722 44, has been paid to the petitioner. He claims that he was entitled to a commission of five *per centum*, upon the above sum of \$131,121 64, amounting to the sum of \$6,556 08, and that there is now due him the sum of \$4,833 64, to wit: the above sum of \$6,556 08 — the sum of \$1,722 44 = to the sum of \$4,833 64. See the statement furnished by the Bureau of Construction, &c.

The Solicitor insists that the Secretary of the Navy had no authority in law to create the agency under which the petitioner claims, and that, therefore, he is not entitled to relief. He refers to the 3d section of the act of March 3, A. D. 1809, (2 Stat. at L., p. 536,) and to the act of March 3, A. D. 1843, (5 Stat., at L., p. 617.) If these were the only acts relating to this subject, the Secretary's authority, to say the least of it, would be very questionable. But by the act of Sep-

tember 28, A. D. 1850, (9 Stat., at L., pp. 513, 514,) the following appropriation is made: "For repair of vessels in ordinary, and for wear and tear of vessels in commission, *including fuel for steamers*, \* \* \* to be bought by the Secretary of the Navy in open market, \* \* \* one million seven hundred and fifty thousand dollars." This provision seems to be temporary only, but it is a clear departure from the acts referred to by the Solicitor. The act, however, further provides, "that in the article of fuel for the navy, or naval stations and yards, the Secretary of the Navy shall have power to discriminate and purchase, in such manner as he may deem proper, that kind of fuel which is best adapted for the purpose for which it is to be used." This provision is obviously of a permanent character, and is broad enough in its terms to include the power to purchase by means of agencies. It authorizes the Secretary to purchase *in such manner as he may deem proper*. Although, for some reason, the coal agencies were, for a short time, discontinued by the Department of the Navy, yet they have since been revived, and coal agents are still in the employment of that department. We see no good ground to question the Secretary's authority to employ such agents.

The agency, then, in which the petitioner was employed, being a lawful one, the next point of inquiry is, what was the contract by which the agency was created? It has been urged in argument that we are to look for its terms exclusively to the letter from the Secretary of the Navy to the petitioner of the 15th day of January, A. D. 1851. If the agency tendered by that letter had been unconditionally accepted by the petitioner, then it and the unconditional acceptance would have constituted the entire contract, the terms of which would have been found in the letter alone. But it needs no argument to show that the mere letter, without some act on the part of the petitioner, would not of itself constitute a contract. The Secretary of the Navy did not so understand the course of business on this subject. During the negotiation with Howland & Aspinwall in reference to their agency, there was a considerable correspondence in writing between them and the Secretary of the Navy, and even after they supposed that they had accepted the agency on the terms proposed by him, he was not satisfied without an explicit declaration by them to that effect. But the petitioner, instead of entering into a written correspondence with the Department of the Navy in reference to the agency tendered to him, went to that department in person, and being, on inquiry made there of the proper officer, satisfactorily assured by him of the character and extent of the offer which had been made, undertook the agency. That there might be no misunderstanding, he was furnished with a form, in which to make out his accounts, and in which were specified the very items of which they were to consist. The letter of the Secretary, then, and what transpired between the petitioner and the chief of the Bureau of Construction, &c., in relation thereto, including the form furnished by the latter, together constitute the contract between the petitioner and the United States. Such was the understanding at the Department of the Navy, for it is admitted by the Solicitor that all the petitioner's accounts, except those relating



to the coal shipped by Howland & Aspinwall, have been settled according to the contract thus constituted; and such indubitably is the correct understanding of that contract. The doctrine that parol evidence shall not be received to explain, contradict, vary, or add to, a written instrument, does not seem to be involved in this case.— (*Knapp vs. Harden*, 6 Carr. & P. 745; 2 Parsons on Con., 65.)

Such being the contract originally made between the United States and the petitioner, it remains but to inquire, whether the petitioner's services in inspecting the coal shipped by Howland & Aspinwall were rendered under it.

The petitioner was a mere agent, with certain specified powers and duties. His powers, in their very nature, were revocable at any time, with or without cause. His duties were to select, purchase and ship anthracite coal for the use of the navy under the directions of the Navy Department; such direction was necessary in every case before he could act; and there was nothing exclusive in the character of his employment. It was competent for the Secretary of the Navy to have employed other agents for the same service, without in any respect violating his contract with the petitioner. The simple inquiry, therefore, now is, can the orders given to the petitioner to *examine* and *inspect* the coal shipped by Howland & Aspinwall be referred to his original contract? They cannot, it is plain, unless they required the same services which were required by the original contract. The petitioner's duty under the original contract was to *select*, *purchase*, and *ship* coal for the use of the navy, whilst the orders required him merely to *examine* and *inspect* the coal shipped by Howland & Aspinwall. The latter was a wholly different duty from the former. The coal furnished by Howland & Aspinwall was *selected*, *purchased*, and *shipped* by them. The services, therefore, required of the petitioner under the original contract were, as regards this coal, required of Howland & Aspinwall, and not of him. He had another duty to perform, viz: to see that the coal selected, purchased and shipped by Howland & Aspinwall was of the proper kind and quality. It seems to us, therefore, that the orders requiring this service cannot be referred to the petitioner's original contract.

There can be no doubt that in making the contract with Howland & Aspinwall, the Secretary of the Navy did not mean to dispense with the services of the agents of the department for supplying coal within the United States. On the contrary, he expressly reserved out of the compensation to be paid to Howland & Aspinwall five *per centum* of the value, at the port of shipment, of the coal to be furnished by them, for the benefit of those agents. He could not require the petitioner to perform the duties pertaining to his original appointment, for they were to be performed by Howland & Aspinwall. As to these, therefore, the petitioner's powers were revoked. But he could create a new agency, with new duties, not at all conflicting with the services required of Howland & Aspinwall. This he did, and the petitioner accepted the appointment. It does not appear that anything was said on either side in regard to compensation. As the duty was different from the duty under the original contract, the new appoint-



ment cannot be regarded as carrying with it an offer of the same compensation which was allowed under the old one. Nor does it appear to us that the old appointment furnishes a just standard of compensation for the services performed under the new one. Under these circumstances, the petitioner can only claim such compensation as his services were reasonably worth. It has not been shown by the evidence that the compensation which he has already received was not just and reasonable.

We are, therefore, of the opinion that the petitioner is not entitled to relief.